

Chapter 17

Advertising and Award Procedures

This chapter is used by local agencies wanting the Montana Department of Transportation (MDT) to advertise and award their Federal Highway Administration (FHWA) construction contracts at the service center level or at the regional level. For these agencies, Chapter 18, MDT Administered Projects, will also apply. This chapter is also used by local agencies operating under Certification Acceptance (Chapter 3) and choosing to advertise and award construction contracts themselves. Chapter 19, Local Administered Projects, will also apply to these agencies. All construction contracts must be on a Transportation Commission- approved letting list prior to award.

17.1 General Discussion – State Advertising and Award Procedures

The District Construction Engineer will appoint a MDT Project Engineer to administer project construction (Chapter 18). The Project Engineer will administer the project in accordance with the *Local Agency Guidelines* manual and in the same manner as other federally funded projects.

The documents that the local agency must submit to MDT in order to have a project advertised and awarded by the state are listed in Chapter 18, which describes the procedures for advertising and awarding a construction contract when MDT is the awarding authority.

17.2 Submittals

When MDT is to advertise and award a construction contract on an FHWA project, the local agency will prepare and submit the following documents to MDT. (Additional details on the content and format of these documents are found in Chapter 16, “Plans, Specifications, and Estimates”, and in the *MDT Construction Manual*.)

17.21 Contract Plans, Specifications, and Estimates PS&E

The originals and one copy of these shall be submitted to the MDT CTEP Engineer. Review of the PS&E and bridge plans by MDT must be scheduled well in advance of the advertising date of the project. MDT review time on complex projects varies between 12 to 18 weeks depending on the type of project and whether the project is advertised by the region or by the service center. Contact the MDT CTEP Engineer to coordinate the submittal time of the PS&E and bridge plans, and for an advance estimate of the time and cost for the reviews.

17.22 Local Agency Letter of Financial Responsibility

See Chapter 16: Plans, Specifications, and Estimates.

17.3 Advertising and Award Procedures

The following process will be used for reviewing contract documents, advertising for bids, evaluating bids, and awarding a construction contract.

- a. The local agency prepares the PS&E package and submits it to the MDT CTEP Engineer a minimum of 15 weeks prior to letting.
- b. The MDT CTEP Engineer reviews the PS&E and sends it to the MDT Contract Plans Bureau for review and approval a minimum of 13 weeks prior to letting. At this time, an advertising date is set.

- c. After its review, MDT CTEP Engineer sends out office copies of the PS&E to the local agency and other offices within MDT for their final review prior to advertising. MDT advertises the project for at least three weeks. MDT receives bids during the period set aside for bid preparation and receipt.
- d. On the date established in the bid advertisement, MDT opens and reads the bids received.
- e. MDT tabulates and evaluates the bids, and sends the bid results to the MDT CTEP Engineer.
- f. The MDT CTEP Engineer advises the local agency of the bid results.
- g. The Local Agency Agreement must be supplemented if any overrun or under run occurs beyond the authorized amount. See Section 7.3,
- h. The Montana Transportation Commission awards the construction contract to the lowest responsible bidder
- i. The MDT Construction Engineer administers the project in the same manner as other federally funded projects and in accordance with departmental policy.

17.4 General Discussion- Local Advertising and Award Procedures

Local agencies may let contracts for their projects provided that the following conditions are met:

- The local agency uses the advertising and award procedures outlined in this section to advertise for bids, select the lowest response bid from a responsible bidder, and award the contract.
- A Local Agency Agreement between the state and local agency is in effect setting forth the conditions under which the project will be constructed.
- The local agency is participating in the cost of the project or has other special interests in it.
- The local agency is certified for project administration in accordance with Chapter 3, Becoming Certified to Administer FHWA Projects.

No project can be advertised until the local agency has approved the PS&E, the environmental document is approved, the project's right-of-way has been certified to the Federal Highway Administration, construction funds have been authorized by the FHWA, and a project number has been obtained from MDT Fiscal Programming Section.

17.5 Procedures

The Local Programs Engineer will monitor local agency compliance with the following procedures for bid advertising and processing of projects.

17.51 Funding

A Local Agency Agreement and construction funds must be authorized by the MDT and FHWA before a contract is advertised.

17.52 Bidding Procedures

The local agency is prohibited from establishing any procedures or requirements for qualification or licensing of contractors, which prevents the submission of bids or prohibits consideration of bids submitted by any responsible contractor, whether resident or nonresident of the state, except as outlined below.

When an agency is considering tied bids, the tied projects must be open to bid by disadvantaged business enterprises (DBE). Specialized contracts such as fencing, landscaping, concrete work, etc., should be considered to permit maximum opportunity for disadvantaged business enterprises.

When the DBE participation goal is included in the contract provisions, meeting the goal is part of the bidding requirements, as explained in Chapter 11, Disadvantaged Business Enterprises, and Chapter 16, Plans, Specifications, and Estimates.

For all FHWA projects, bidding opportunities, on a nondiscriminatory basis, shall be afforded to all qualified bidders. No bidder shall be disqualified or prevented from competitive bidding by restricting the purchase of a surety bond or insurance policy from any surety or insurer outside the state and authorized to do business with the state.

17.53 Preparation of the Project Proposal

See Section 102 of the *MDT Standard Specifications*

17.54 Advertising of the Project

FHWA projects previously approved should be advertised for a four -week period prior to opening of bids. The four-week advertising period begins when the first advertisements is published. If an agency wants an advertising period of less than three weeks, documentation by the local agency and approval by FHWA and MDT for the shorter period must be in the project file. Examples of shorter advertising periods are as follows:

- Emergency correction of roadways or bridges.
- To meet the conditions of a fisheries permit.
- To meet the conditions of a Bureau of Reclamation Permit (irrigation canal).

The project will be advertised in the official legal publication for the agency and, if necessary, other newspapers to provide the widest possible, coverage commensurate with the size of the project.

The local agency will comply with the standard USDOT Title VI Assurances by inclusion of the following language in the solicitations for bids:

“The (local agency) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.”

Should an addendum be necessary during the advertising period to correct or add something to the bid or plan data, such addenda shall be approved by the local agency a minimum 7 days prior to transmittal to the individual contractors holding the plans, specifications, and bid document data. Each bidder shall present with their bid written notice of their receipt of each addendum received.

17.55 Bid Opening

All bids received in accordance with the terms of the advertisement shall be publicly opened and announced by total amount.

If any bid received is determined non-responsive, the name of the bidder shall be publicly announced at the bid opening and the bid amount will not be read.

Adequate justification for rejecting any bids must be documented by the local agency and approved by the Transportation Commission.

17.56 Evaluating Bids for Award

The local agency shall verify that all required bid documents have been properly submitted and executed by all bidders. All bids are then reviewed for accuracy, unbalancing of bid items, etc., and tabulations checked and confirmed.

In order for a bid to be considered responsive, a bid deposit of at least 10 percent of the total bid proposal must accompany each bid. In accordance with Section 102.07 of the *Standard Specifications*, the Proposal Guaranty shall not be conditioned in any way to modify the minimum 10 percent required. When there is a specified DBE goal for the project, the successful bidder will be selected on the basis of having submitted: (1) the lowest responsive bid which has met the DBE goal; or (2) when the DBE participation is less than the specified goal, responsiveness will be determined on the basis of good faith efforts to attain the goal.

The local agency shall prepare a tabulation of bids showing the item details for all responsive and responsible bids.

The local agency shall document the reason(s) for rejecting the low bid and may reject all bids for any reason(s) with Commission approval.

Reasons for justifying an unusual award:

- Where the competition is good; or
- Where the project is essential to the public interest (safety, emergency repair, etc.); or
- Where the engineer's estimate is clearly in error to a significant amount; or
- Where re-advertising would not likely result in lower bids.

If the local agency determines that the lowest bidder is not qualified, it shall document those findings prior to awarding the bid to the next-lowest responsible bidder.

The Local Agency Agreement must be supplemented if any overrun or under run occurs beyond the authorized amount. See Section 7.3.

One originally signed Supplemental Agreement form must be submitted to the MDT CTEP Engineer. This supplemental agreement form will be retained by MDT. It is the responsibility of the local agency to submit an additional supplemental agreement form or copy if they need an executed supplemental agreement for their files.

17.57 Award of Contract

After bids have been tabulated and evaluated in accordance with the procedures described above, the construction contract may be awarded to the lowest responsive bidder.

After award by the Transportation Commission, the local agency must advise the contractor of the award in writing. For an example of an award letter for a contract that has an identified DBE goal, see Appendix 17.73. The second, third, fourth, and fifth paragraphs must be included in the local agency letter. An award letter for contracts without a DBE goal can be similar but would not include the second, third, fourth, and fifth paragraphs.

17.58 Execution of Contract

Local agencies shall not execute a contract with any contractor who is not registered in accordance with state laws.

The local agency prepares the necessary documents and forwards them for execution by the successful bidder and the proper officials of the local agency.

A sample of a standard contract agreement is in Appendix 16.72. The MDT CTEP Engineer can furnish these standard forms upon request.

17.6 Submittal of Award Data

Before construction begins, the local agency must submit the following information to the MDT CTEP Engineer:

- Tabulation of bids
- Engineer's estimate
- Award letter to the contractor
- Names and addresses of all firms that submit a quote to the successful low bidder (if applicable)
- DBE utilization certification, Form 272-056A

A revenue report must also be submitted:

- The estimated completion date or the number of working days for the contract
- Failure to submit the above listed information, before construction begins, will result in a delay of reimbursement for the billed cost, until the information is received.

17.7 Appendices

17.71 Sample Submittal of Award Data

17.72 Sample Advertisement

17.73 Sample Condition of Award Letter (DBE Contract Goals)

17.74 Sample Condition of Award Letter (DBE Prime Contractor)

17.75 Sample Contract Bond

17.76 Sample Revenue Report

Appendix 17.71 Sample Submittal of Award Data

Project Title _____ FHWA Project No. _____

Attached are the following required documents plus any additional information that may be applicable:

_____ Bid proposal from the lowest responsible bidder.

_____ Bid bond.

_____ Noncollusion Plan Certification.

_____ DBE Certification (if required).

_____ Tabulation of Bids.

_____ FHWA cost breakdown showing total project cost, FHWA participation and local agency participation.

_____ Additional documents.

Date

Local Agency Engineer

Date

Approving Authority

Appendix 17.72

Sample Advertisement

INVITATION TO BID
LOCAL AGENCY'S LETTERHEAD
DEPARTMENT OF ENGINEERING
MONTANA

Sealed bids will be received by the (local agency), at the reception desk located in Room _____ of the _____, Montana until _____ a.m. on _____ and will then and there be opened and publicly read for the construction of the improvement(s).

All bid proposals are to be accompanied by a bid proposal guaranty in the form of a surety bond in an amount equal to 10% percent (10%) of the amount of such bid proposal. Should the successful bidder fail to enter into such contract and furnish satisfactory performance bond within the time stated in the specifications, the bid proposal guaranty will be forfeited to the (local agency).

Maps, plans, and specifications may be obtained from this office upon payment of the amount of \$_____

Informational copies of maps, plans and specifications are on file for inspection in the Office of the Local Agency Engineer, (local agency), Montana.

The following is applicable to federal aid projects.

The (local agency) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.

The improvement for which bids will be received is described below:

Bid Opening of

*This bolded paragraph cannot be reworded for FHWA funded projects.

Appendix 17.73 Sample Condition of Award Letter (DB E Contract Goals)

Local Agency Letterhead

Date of Award

To:— contractor —Project Title

FA No.

Contract No.

This will advise that the contract for the above referenced project has been awarded to your firm at your bid price of \$_____

This letter shall become a contract specification at the time of award.

It is the policy of the United States Department of Transportation and the — local agency's name — that Disadvantaged Business Enterprises (DBE), as defined in the specifications for this contract, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, (except as specifically provided in the specifications for this contract) the requirements of 49 CFR 26 apply to this contract.

As contractor, you are agreeing to ensure that DBE as defined in the specifications of this contract have the maximum opportunity to participate in the performance of this contract. In this regard, you are obliged to take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure DBEs are informed of this project and given equal consideration in awarding of work. You are legally bound not to discriminate on the basis of race, color, national origin, or sex in the performance of this contract.

The award of this contract was made with the understanding that you will be subcontracting the following bid items to the firms as indicated:

DBE		Subcontractor	Bid
<u>Subcontractor</u>	<u>Bid Items</u>	<u>Approx. Amount</u>	<u>Proposal Amount</u>

The total of the above subcontract(s) is \$_____. The contract will be forwarded to you at an early date. The contract must be signed and returned in accordance with the mailing instructions furnished with the contract documents. Please return these documents within calendar days after the date of award.

Very truly yours,

- local agency -

Appendix 17.74 Sample Condition of Award Letter (DBE Prime Contractor)

To: - Contractor -

Award Date

Project Title
Federal Aid No.
Contract No.

Dear:

This will advise you that the contract for the above referenced project has been awarded to your firm at your bid price of \$_____

The contractor agree to take all necessary and responsible steps in accordance with 49 CFR, part 26 to ensure that Disadvantaged Business Enterprises, as defined in the specifications for this contract, have the maximum opportunity to participate in the performance of this contract.

The requirements of 49 CFR 26 have been satisfied as your firm has attained the goal established for Disadvantaged Business Enterprises as set forth in the specifications of this contract, by virtue of the fact that it has been certified as a Disadvantaged Business.

DBE Goal - \$

Total DBE Attainment - \$

The contract will be forwarded to you under separate cover. The contract must be signed and returned in accordance with the mailing instructions furnished with the contract documents. Please return these documents within 20 calendar days after the date of the award.

Sincerely

local
agency

Appendix 17.75 Sample Contract Bond

CONTRACT BOND I'm assuming that they need to use the Department furnished form? Let me know and I can get it for you.....

KNOW ALL MEN BY THESE PRESENTS, That

Of _____, as Principal, and _____

As Surety, are jointly and severally held and bound unto the _____

City/County

In the penal sum of Dollars (\$_____), for the payment of which we jointly and severely bind ourselves, our heirs, executors, administrators, and assigns and successors and assigns, firmly by these presents.

THE CONDITION of this bond is such that whereas, on the _____ day of _____ A.D., _____, the said _____ Principal, herein, executed a certain contract with the _____

City/County

By the items, conditions and provisions of which contract the said _____ Principal, herein, agree to furnish all material and do certain work, to wit: That _____ will undertake and complete the construction of _____

According to the maps, plans and specifications made a part of said contract, which contract as so executed, is hereunto attached, is now referred to and by reference is incorporated herein and made a part hereof as fully for all purposes as if here set forth at length. The bond shall cover all approved change orders as if they were in the original contract.

NOW, THEREFORE, if the Principal herein shall faithfully and truly observe and comply with the terms, conditions and provisions of said contract in all respects and shall well and truly and fully do and perform all matters and things by Undertaken to be performed under said contract, upon terms proposed therein, and within the time prescribed therein, and until the same is accepted, and shall pay all laborers, mechanics, subcontractors and material men, and all persons who shall supply such contractor or subcontractor with provisions and supplies for the carrying on of such work, and shall in all respects faithfully perform said contract according to law then this obligation to be void, otherwise to remain in full force and effect.

WITNESS our hands this _____ day of _____, _____

Principal

Attorney-In-Fact, Surety

Name and Address Local Office of Agent

APPROVED:

City/County

By: _____
Approving Authority

Date: _____

Surety Bond Number

Contract Number

Appendix 17.76 Sample Revenue Report

STATE OF MONTANA DEPARTMENT OF REVENUE CONTRACT AWARD REPORT			
1	CONTRACT AWARDING AGENCY OR PRIME CONTRACTOR MUST COMPLETE THIS FORM AND MAIL TO THE STATE DEPARTMENT OF REVENUE IMMEDIATELY AFTER CONTRACT OR BID HAS BEEN OFFICIALLY AWARDED.		
2	Contract Awarded by (Agency or Prime Contractor) <u>MONTANA DEPT OF TRANSPORTATION</u> Name <u>2701 PROSPECT AVENUE</u> Address <u>HELENA</u> <u>MT</u> <u>59620</u> City/Town Zip Code	MAIL TO: Miscellaneous Tax Division Department of Revenue Mitchell Building Helena, Montana 59620-2701	
3	Contract awarded to (Prime or Sub-Contractor) Name Address City/Town Zip Code	4	Montana Public Contractor's License Number N/A
		5	Contract Award Date
		6	Construction Completion Date
7	Contract Number/Official Designation	8	Contract Amount \$
9	Description and Location of work to be performed		
REPORT SUBMITTED BY		Agency or Prime Contractor MONTANA DEPARTMENT OF TRANSPORTATION CONTRACT PLANS SECTION	
AWARD AUTHORIZATION		Authorized Representative Date Contract Plans Bureau Chief	